

REMARKS/ARGUMENTS

Claims 36-38, 40, 42-45, 47-62 and 66-68 are pending, claims 46, 47-49 and 66-68 having been withdrawn from consideration. By this Amendment, claims 39, 41, 46 and 63-65 are cancelled, and claims 36, 40, 42, 45 and 50-52 are amended. Support for the amendments to claims 36, 40, 42, 45 and 50-52 can be found, for example, in the present specification at page 6, line 33, and in original claims 36, 39-42, 45, 46 and 65. No new matter is added. In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

Withdrawn Claims

For the reasons set forth below, Applicants submit that all pending claims presently subject to examination are in condition for allowance. Because each of the withdrawn claims depends from, and thus recite all features of, an allowable claim subject to examination, rejoinder and allowance of the withdrawn claims are respectfully requested.

Rejection Under 35 U.S.C. §103

The Office Action rejects claims 36-44 and 50-65 under 35 U.S.C. §103(a) over U.S. Patent No. 5,985,298 to Brieva et al. ("Brieva"). By this Amendment, claims 39, 41 and 63-65 are cancelled, rendering the rejection moot as to those claims. As to the remaining claim, Applicants respectfully traverse the rejection.

Claim 36 recites "[a] composition, comprising: at least one fatty phase comprising at least one structuring agent; wherein: the structuring agent is selected from the group consisting of tackifying waxes, combinations of at least one specific compound with at least one oil, and mixtures thereof; the at least one specific compound is selected from the group consisting of semi-crystalline polymers, fatty-phase rheological agents and mixtures thereof;

the tackifying wax has a tack greater than or equal to 0.7 N.s; the composition has a solids content defined by a dry solids extract of more than 47% by weight; the composition has a consistency index of less than 1 000 Pa; and the composition is in the form of mascara"  
(emphasis added).

As indicated above, the composition of claim 36 requires a structuring agent including one or more of a semi-crystalline polymer, a fatty-phase rheological agent and a tackifying wax having a tack of greater than or equal to 0.7 N.s. Brieva discloses a cosmetic composition, especially a mascara composition, including a trimethylated silica, a volatile solvent, a nonvolatile oil, a dry particulate matter, a film former, and an emulsifier. *See, e.g., Brieva*, column 5, lines 41 to 53. However, the composition of Brieva does not include the structuring agent of claim 36.

Brieva does not disclose employing a semi-crystalline polymer in the disclosed compositions. The compositions of Brieva also do not include a fatty-phase rheological agent.

Rather, the compositions of Brieva employ a trimethylated silica in combination with a volatile solvent. *See Brieva*, Examples 1 to 6. This blend is available from Dow Corning under the trade name Dow 2-0747 or 2-0749 cosmetic fluid – the blend includes approximately equal parts of a combination of volatile silicones and trimethylated silica. *See Brieva*, column 2, lines 13 to 19. In fact, as is apparent from the product information for Dow Corning 749 fluid (copy attached hereto), the blend includes trimethylsiloxy silicate. According to its CFTA online entry (copy attached hereto), trimethylsiloxy silicate is a siloxane polymer also known as MQ resin.

Claim 36, by contrast, may employ fatty phase rheological agents, such as silica silylates. *See* present specification, pages 24 to 25. Exemplary silica silylates include Cab-O-Sil TS-530. *See* CFTA Online Entry for Silica Silylates (copy attached hereto). The

enclosed product information from CABOT Cab-O-Sil TS-530 (copy attached hereto) confirms that silica silylates are rheological control agents. By contrast, the product information for Dow Corning 749 fluid plainly indicates that the relevant component of the compositions of Brieva is a film forming agent. That is, while the composition of claim 36 may include a fatty-phase rheological agent, Brieva relies on a film forming agent.

The compositions of Brieva do not include a tackifying wax having a tack of greater than or equal to 0.7 N.s. While Brieva indicates that waxes may be employed in the enclosed compositions (*see, e.g., Brieva*, column 5, lines 58 to 65), there is no disclosure in Brieva of the tack of the particular waxes, much less that waxes employed in mascara compositions should have the particular tack values encompassed by claim 36. The mascara composition of Brieva (Example 2) includes carnauba wax, candellila wax, beeswax and synthetic wax. *See Brieva*, column 7, lines 62 to 65. One of ordinary skill in the art would appreciate that beeswax has a tack of 0.52, carnauba wax has a tack of 0.00, candellila wax has a tack of 0.00, and paraffin (a typical synthetic wax) has a tack of 0.08. Thus, the waxes of Brieva are not tackifying waxes, as required by claim 36.

As Brieva fails to disclose or suggest a mascara composition including a structuring agent including one or more of a semi-crystalline polymer, a fatty-phase rheological agent and a tackifying wax having a tack of greater than or equal to 0.7 N.s, Brieva fails to disclose or suggest each and every feature of claim 36.

The present inventors have discovered that the structuring agent of claim 36 can be incorporated in part or in whole into the fatty phase of the composition without greatly increasing its consistency index, making it possible to obtain compositions with solids contents in excess of 47%, which is much higher than previously possible. *See* present specification, page 5. The structuring agent of claim 36 also make it possible couple this high solids content with a consistency that makes it possible to apply the composition with

satisfactory volumizing and separating effect. *See* present specification, page 5. Moreover, the structuring agent of claim 36 provides for improved attachment to keratin fibers in a manner that is homogeneous and rapid due to the composition's tacky character. *See* present specification, page 6. Brieva does not disclose or suggest incorporating a structuring agent as recited in claim 36 into a mascara composition, or recognize the benefits stemming therefrom.

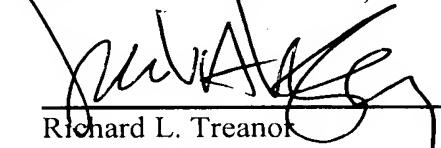
As explained, claim 36 would not have been rendered obvious by Brieva. Claims 37, 38, 40, 42-44 and 50-62 depend from claim 36 and, thus, also would not have been rendered obvious by Brieva. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Conclusion

For the foregoing reasons, Applicants submit that claims 36-38, 40, 42-45, 47-62 and 66-68 are in condition for allowance. Prompt reconsideration and allowance are respectfully requested.

Respectfully submitted,

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Attachments:

Product Information for Dow Corning 749 Fluid  
CFTA Online Entry for Trimethylsiloxysilicate  
CFTA Online Entry for Silica Silylates  
Product Information from CABOT Cab-O-Sil TS-530